

Sep 14, 2017

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JESS RICHARD SMITH,

Plaintiff,

v.

KEITH GOODENOUGH, SCOTT  
BUTTICE and S. SUNDBERG,

Defendants.

No. 4:17-CV-5060-SMJ

**ORDER ADOPTING REPORT  
AND RECOMMENDATION AND  
DENYING MOTION FOR  
TEMPORARY RESTRAINING  
ORDER/PRELIMINARY  
INJUNCTION**

Before the Court is Magistrate Judge Mary K. Dimke's Report and Recommendation, ECF No. 16, to deny Plaintiff's Motion for Temporary Restraining Order, ECF No. 5. Plaintiff, a prisoner at the Washington State Penitentiary is proceeding *pro se* and *in forma pauperis*; Defendants have not been served. Plaintiff has filed a timely Objection, ECF No. 18.

Magistrate Judge Dimke determined the Court lacked jurisdiction to consider Plaintiff's Motion because he had not yet presented a legally sufficient complaint. ECF No. 16 at 2. Plaintiff appealed the directive to amend or voluntarily dismiss

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1 and his interlocutory appeal was dismissed for lack of jurisdiction on August 17,  
2 2017. ECF No. 24.

3 In his Objection, Plaintiff contends that Magistrate Judge Dimke exceeded  
4 her authority by entertaining his motion. The Court disagrees. Although the power  
5 of federal magistrate judges is limited by 28 U.S.C. § 636, a district judge may  
6 authorize a magistrate judge to prepare findings and recommendations on  
7 dispositive matters. *See* 28 U.S.C. § 636(b)(1); *Estate of Conners v. O'Connor*, 6  
8 F.3d 656, 658 (9th Cir. 1993). That is what was done here. Magistrate Judge Dimke  
9 did not issue a dispositive Order. Plaintiff's objection is misplaced.

10 Next, Plaintiff challenges the directive to amend his complaint. He has  
11 unsuccessfully appealed that issue. To the extent Plaintiff is now objecting to a  
12 separate Order, he must limit his objections to the content of the Report and  
13 Recommendation.

14 In addition, Plaintiff complains about a failure to "note" his Motion before a  
15 District Court. Apparently, he is concerned that, despite the fact he had noted his  
16 Motion for hearing on May 30, 2017, it was not considered until July 26, 2017, and  
17 then by a magistrate judge. A noted hearing is not a guarantee that a Motion will be  
18 resolved by a particular date.

19 This Court has reviewed Plaintiff's Motion, along with the Report and  
20 Recommendation and Plaintiff's objections. Being fully informed, the Court finds

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1 the Magistrate Judge's recommendation is correct. Indeed, Plaintiff concedes his  
2 Motion for a Temporary Restraining Order is now moot because he has been  
3 released from the Intensive Management Unit. ECF No. 18 at 4.


4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. The Report and Recommendation, ECF No. 16, is **ADOPTED IN ITS**  
6 **ENTIRETY.**

7 2. Plaintiff's Motion for Temporary Restraining Order and Preliminary  
8 Injunction, ECF No. 5, is **DENIED.**

9 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and  
10 provide a copy to Plaintiff.

11 **DATED** this 14th day of September 2017.

12   
13 SALVADOR MENDEZ, JR.  
United States District Judge